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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 455

LUCY ASKAM, *et als., Appellants,*

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK and STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY, *Appellees.*

BRIEF IN OPPOSITION TO MOTION TO DISMISS THE APPEAL AND, IN THE ALTERNATIVE, TO AFFIRM.

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In the motion to affirm on the ground that the questions on which the decision depends are so unsubstantial as not to need further argument, several contentions are advanced upon which it may be helpful to comment. It is first contended that the jurisdictional statement filed by the appellants pursuant to Rule 12 cites cases dealing with the employment of school teachers which are not in point because not involving legislative attempts to repeal or modify earlier statutes. By way of supplement to what has been said in the jurisdictional statement, and without repeating citations, attention is called to the fact that the school cases there cited, whether or not involving subsequent legislation, are authority for the proposition that the employment of teachers in the public schools is con-

tractual and that this case, therefore, is not within the well established rule that the compensation of a public officer can be reduced during his term of office by legislation.

It is also contended that Chapter 243 of the New Jersey Laws of 1909 conferred upon the appellants only personal rights which are not entitled to constitutional protection. This contention is unsound. Employment contracts between governmental units and individuals are as much within the protection of the Constitution as other contractual relationships. *Hall* v. *Wisconsin*, 103 U. S. 5.

We respectfully submit that there is a substantial question here as to the extent of the contracts between the appellants and the West New York Board of Education. When the appellee Board of Education employed the appellants for a fourth year of teaching service, and the appellants chose to accept such employment, Chapter 243 of the New Jersey Laws of 1909 was in force, and provided that after the expiration of three consecutive years of employment in a particular school district no teacher should be dismissed or subjected to reduction of salary except for certain stated reasons. Can it be said that the parties did not accept the existing Statute as the basis for their agreement or that they did so with the idea that the Statute was subject to some reserved power in the State to alter it at will? These questions have substance, which is all that need be shown at this stage of the case. More than fifty years ago Mr. Justice Miller, speaking for the Court in *New Jersey* v. *Yard*, 95 U. S. 104, 113 *et seq.*, aptly described the problem created by a situation like the present one. He said:

> "It may safely be said that in far the larger number of cases brought to this court under that clause of the Constitution, [the Contract Clause] the

question has been as to the existence and nature of the contract, and not the construction of the law which is supposed to impair it; and the greatest trouble we have had on this point has been in regard to what may be called legislative contracts,—contracts found in statute laws of the State, if they existed at all. It has become the established law of this court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the State within the protection of the clause referred to of the Federal Constitution.

"The difficulty in this class of cases has always been to distinguish what is intended by the legislature to be an exercise of its ordinary legislative function in making laws, which, like other laws, are subject to its full control by future amendments and repeals, from what is intended to become a contract between the State and other parties when the terms of the statute have been accepted and acted upon by those parties. This has always been a very nice point; and, when the supposed contract exists only in the form of a general statute, doubts still recur, after all our decisions on that class of questions."

Legislation applying to a contracting municipal corporation is no exception to the general rule that the obligation of a contract is determined by the laws in force at its making. *Worthem Co.* v. *Kavanaugh,* 295 U. S. 56; *Hubert* v. *New Orleans,* 215 U. S. 170.

The portion of the present motion which urges the dismissal of the appeal for want of jurisdiction is based upon a statement opposing jurisdiction which has been filed pursuant to paragraph 3 of Rule 12. It is asserted in the state-

ment that, since the courts of New Jersey have ruled against the existence of a contract, the decision of the constitutional questions raised was completely avoided. It is hardly necessary to say that this argument overlooks the established rule that in cases arising under the Contract Clause of the United States Constitution, it must always be determined whether or not there was a contract. Such determination is a part of the constitutional question.

It is respectfully submitted that the motion should be denied.

ROBERT H. MCCARTER,
Counsel for Appellants.